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**Identifying »Enemy Citizens«**

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MARIEKE OPREL

## IDENTIFYING »ENEMY CITIZENS«

### Dutch (De-)Enemisation Policies towards German Nationals (1944–1967)

»The time is here. The long night that was the occupation is over. The Mof is gone. Life can start again!« Optimism and joy are what the opening lines of a 1944 Military Authority Brochure, titled »Hoedt u voor den Kater!«, express at first sight<sup>1</sup>. After years of Nazi occupation, the southern parts of the Netherlands were liberated and better times lay ahead for the Dutch. But, what kind of »new« life? How to organise the chaos? To answer the countless questions bothering the Dutch people, and to keep up national morale and to plead for patience, the Military Authority (Militair Gezag, MG) published several brochures. The MG was established in 1944 by the Dutch government-in-exile in London to restore order to Dutch post-war society and to organise the daily administration of justice. Torn between Dutch interests and Allied demands on the one hand, and the German occupier who still held control over the central and northern parts of the Netherlands on the other, the MG had the difficult task of taking the first steps in the process of restoration and reconstruction. Dutch society had to be purged of nationalist socialists and collaborators; refugees and displaced persons had to be repatriated; the economy and infrastructure had to be restored and, given that that food was in short supply, the MG was in charge of the distribution of goods. The MG was also to start the implementation of various decrees, including the Decree on Enemy Property of 20 October 1944 (*het Besluit Vijandelijk Vermogen*, BVV). With this, the Dutch government declared all German nationals and other nationals related to the Axis powers of Italy and Japan enemy citizens (*vijandelijke onderdanen*). A newly established Dutch Property Administration Institute (*Nederlands Beheersinstituut*, NBI), one of the departments of the Council of Restoration of Rights (*Raad voor het Rechtsherstel*), was authorised to strip these enemy citizens of their assets, regardless of their political allegiance or place of residence and without any Dutch compensation. The Decree was one of the measures against German nationals as a category, and implemented to enforce legal redress after the Nazi occupation. It was followed by an act to expel all Germans from the Netherlands, known as *Operation Black Tulip*, and plans to annex German territory, such as the *Bakker Schut Plan*.

The history of German enemy citizens in the Netherlands, as part of the post-war legal redress in general, has received little attention from historians and has long been separated from historiography about the Second World War<sup>2</sup>. This can be explained by the trends, phases and the different approaches to the Second World War. For many years, the moral perspective of »right« and »wrong« – the contrast between Dutch people who were »right« since they had resisted German occupying forces on the one hand, and those who were »wrong« because they collaborated on the other hand – dominated both Dutch society and historiography. Amongst

1 Brochure Militair Gezag, National Archives, The Hague, Archive Militair Gezag, (1939) 1943–1946 (1956), 2.13.25, inventory number 347.

2 Marieke OPREL, *Ontvijandingsbeleid en rechtsherstel. Een verkennend onderzoek naar het beleid ten aanzien van vijandelijke onderdanen in Nederland tussen 1945 en 1967*, Amsterdam 2014 (unpublished MA-thesis).

others, Pieter Lagrou pointed out that in order to restore the highly fragmented Dutch country, and to emphasise the legitimacy of the post-war government, a national consensus had to be reached on the experience of the Second World War<sup>3</sup>. Resistance became the sole basis for the reconstruction of national identity after the war; attention to the suffering of particular groups besides the nation, such as Jews, was limited. This national heroic myth was challenged in the course of the 1960s. A new generation began to pose different, critical questions about the period of Nazi occupation and thereby introduced an approach to the war that differed from the hagiographic approach that had characterised historiography until then<sup>4</sup>. Attention to the fate of Dutch Jews during the war increased, partly the result of the success of the two-volume book »Ondergang: De Vervolging en Verdelging van het Nederlandse Jodendom« (1965) by Jacques Presser. The 1961 trial of the State of Israel against Adolf Eichmann also contributed to greater awareness. Victims of the Nazi regime were for the first time publicly allowed to tell their stories.

It was in the course of these differentiations and growing criticism of the national framework that the first studies on Dutch legal redress arose in the late 1970s. A. D. Belinfante, a former official of the Directorate for Extraordinary Law Enforcement of the Ministry of Justice (Directoraat-Generaal voor de Bijzondere Rechtspleging), put the process of Dutch restorative justice on the academic agenda with his 1978 study of the post-war extraordinary criminal law ruling<sup>5</sup>. In 1980 and 1982 M. D. Bogaarts wrote two articles about Dutch plans to deport all Germans from the Netherlands and to annex German territory<sup>6</sup>. However these articles hardly received any attention. It took until the 1990s before studies on legal redress truly merged with historiography on World War II in general. A study of Dutch post-war policies towards collaborators by historian Peter Romijn (1989) proved a turning point<sup>7</sup>. Romijn drew attention to the role of lawyers, criminologists and social workers, who in a joint effort transformed collaborators from a class of traitors and enemies of the nation into a group of individuals suffering from the social disease of political delinquency. Also in 1989, semi-official historian Loe de Jong published the epilogue of his *magnum opus* on the Netherlands during World War II<sup>8</sup>. De Jong's work had an enormous influence: over 100 000 copies of the complete series of twenty-nine volumes were sold. In this volume, which discussed for the first time the various aspects of Dutch legal redress, one paragraph was dedicated to Dutch policies towards German nationals. Friso Wielenga suggested in his dissertation on post-war Dutch-German relations (1989) that the Dutch administration of justice towards German nationals was rather arbitrary<sup>9</sup>. He stated that national financial interests initially prevailed in the Dutch (de)-enemisation policies. The

- 3 Pieter LAGROU, The politics of memory. Resistance as a collective myth in post-war France, Belgium and the Netherlands 1945–1965, in: *European Review* 11 (2003), p. 527.
- 4 Wijnand MIJNHARDT, Dutch perceptions of World War II: the struggle with an unredeemable past, lecture at UCLA Los Angeles 2002, p. 11–12. Chris van der HEIJDEN, *Grijs verleden: Nederland en de Tweede Wereldoorlog*, Amsterdam 2001, p. 380.
- 5 A. D. BELINFANTE, *In plaats van bijltesdag. De geschiedenis van de Bijzondere Rechtspleging na de Tweede Wereldoorlog*, Assen 1978.
- 6 M. D. BOGAARTS, *Weg met de moffen. De uitwijzing van Duitse ongewenste vreemdelingen uit Nederland na 1945*, in: *Bijdragen en Mededelingen betreffende de Geschiedenis der Nederlanden* 96 (1981), p. 334–351.
- 7 Peter ROMIJN, *Snel, streng en rechtvaardig. De afrekening met de 'foute' Nederlanders*, Amsterdam 1989.
- 8 Loe DE JONG, *Het Koninkrijk der Nederlanden in de Tweede Wereldoorlog. 12 Epiloog*, Tweede helft, The Hague 1988.
- 9 Friso WIELENGA, *West-Duitsland: Partner uit Noodzaak. Nederland en de Bondsrepubliek 1949–1955*, Utrecht 1989. Worth mentioning is also a study on the confiscation of the island Schiermonnikoog, which was originally owned by a German family: Foskea van der VEN, *Een omstreden eiland. De eigendom van het eiland Schiermonnikoog in het geding*, Groningen 1993.

Dutch wanted to retain as much confiscated German enemy property as possible. Over time, however, financial interests seem to have given way to more political and moral considerations in order to restore bilateral relations. Yet in all of these studies, the history of German enemy citizens is just mentioned in the margins. The extensive archives of the Council of Restoration of Rights and the Dutch Property Administration Institute have not yet been investigated in greater depth. To this day much is unclear about Dutch post-war judicial measures that affected tens of thousands of German nationals.

In this article, to initiate debate and more research, I want to explore three aspects of this widely unknown page in Dutch post-war history. First, I will focus on the global reach of Dutch jurisdiction. In the predominantly nationalistically orientated post-war historiography it is often forgotten that in 1945 the Netherlands were still constituted as a Kingdom with overseas territories. As I will illustrate, Dutch policies towards German nationals did not only affect Germans in the Netherlands but those in Surinam, Curacao and what is today Indonesia, too. Secondly, I want to question whether we can understand Dutch policies towards German enemy citizens as a process of transitional justice. In recent historiography, the field of transitional justice, focusing on (non)judicial measures implemented to redress human rights abuses and to deal with the past, has often been used to reflect on and explain the post-1945 period. I will explore whether Dutch policies were perceived as measures to achieve justice, and to what extent the instrumentarium of transitional justice can help understand post-war policies. Thirdly, I will analyse Dutch post-war administration of justice towards German nationals by focusing on the concept of citizenship. Political and legal thought today are suffused with the language of citizenship, which also pervades our public political discourse. German nationals in the Netherlands were often residents with no official Dutch legal status. After the Second World War, borders as well as the status of borders changed. The very heterogeneous German minority was excluded because of their (former) German citizenship and collectively declared enemy citizens, which puts the specific use and understandings of the concept of citizenship centre-stage in this history of post-conflict transition.

### A Kingdom in a Global War

The history of German enemy citizens in the Dutch Kingdom begins in May 1940. In the early hours of the morning, 10 May, Germany invaded the Netherlands. The hope that the Netherlands could hold off the Germans for a few weeks proved illusory. The Dutch army capitulated on 15 May. The Germans did not succeed in arresting Queen Wilhelmina and her ministers, who fled to London on 13 May, where they would remain in exile during the war. The Netherlands was brought under the rule of a German civilian administration, led by *Reichskommissar* Dr. Arthur Seyss-Inquart. In the Dutch overseas territories, the Second World War also had a major impact. US troops arrived on 24 November 1941 in Surinam, and on 11 February 1942 in Curacao and Aruba. The troops were sent in consultation with the Netherlands government-in-exile to protect the important bauxite and oil industries. The West Indies, the overseas territories in the Caribbean Sea, were not occupied, in contrast to the Dutch East Indies, where the attack on Pearl Harbour of 7 December 1941 marked a historical juncture. On 8 December 1941, the Kingdom of the Netherlands declared war on Japan. In early 1942 Japan invaded and occupied the Dutch East Indies. The Japanese occupation would prove a major factor in the end of Dutch colonial rule in the region.

In London, the Dutch government-in-exile prepared Dutch post-war reconstruction and restorative justice. Following the Allied Powers, who had already prepared post-war administration of justice at an early stage, several decrees and acts were passed by the Dutch cabinet between 1942 and 1945. On 30 March 1943, the first worldwide blacklist of persons regarded as enemies of the Dutch state was published based on lists drafted by Great Britain and the USA.

In December 1943, the Extraordinary Criminal Law Ruling (*Besluit Bijzondere Rechtspleging*) was issued. On 17 September 1944, the day Allied troops arrived in the Netherlands (Operation Market Garden), the Tribunal Decree (*Tribunaalbesluit*) and the Restitution of Legal Rights Decree (*Besluit Herstel Rechtsverkeer*) were issued, providing for the establishment of a Council of Restoration of Rights after the German capitulation. A month later, the Decree on Enemy Property followed. The Decree on Enemy Property had major implications for German nationals within Dutch jurisdiction. As a result of this Decree, German nationals were no longer allowed a residence or a work permit. Their property was taken over by the NBI, which was specially founded to manage, detect and liquidate the property of collaborators and enemy citizens. Companies, stocks, estates, houses, even spoons and forks were confiscated. Since the decree was an official royal decree, it affected Germans in the Netherlands as well as those Germans who held residence in Surinam, Curacao, the Antilles and the former Dutch East Indies. How many German nationals lived and worked in the complete Kingdom of Netherlands at the time of the implementation of the Decree is unknown, but Germans were the largest immigrant minority in the Netherlands in the eighteenth century, the nineteenth century and most of the twentieth century (until the census of 1971)<sup>10</sup>. The number of Germans who migrated to the Netherlands fluctuated over time, but based on population registers it is estimated that 60 percent of all foreigners in the Netherlands in the 19th century came from German regions<sup>11</sup>. This official number is even greater when one takes into consideration that the children of these German immigrants are not included because until 1892 children born in the Netherlands of a German parent automatically received Dutch citizenship<sup>12</sup>. In the 1920s, thousands of Germans came to the Netherlands and between 1920 and 1930 the German population almost doubled from 56 351 to 102 833<sup>13</sup>. In the Dutch East Indies, Germans were the third largest group after the Dutch and the Japanese<sup>14</sup>. Moreover, many Germans lived and worked in Surinam as missionaries and teachers, such as the *Hernbutters*.

The majority of German migrants settled and integrated into Dutch society. Katja Happe has pointed out that most Germans were caught in a »Wechselspiel zwischen Herkunfts- und Kontextbewusstsein«, as they felt a sense of belonging both to their motherland and their new fatherland<sup>15</sup>. German nationals who were only members of German organisations and institutions, sent their children to German schools, spoke exclusively German and had little interaction with Dutch people – and who created an isolated German island for themselves –

- 10 Centraal Bureau voor de Statistiek (CBS), 14e Algemene Volkstelling annex Woningtelling. Den Haag 1978, deel 1B, Niet-Nederlandse nationaliteiten, staat p.10, 27.
- 11 Marlou SCHROVER, Whenever a Dozen Germans Meet... German Organizations in the Netherlands in the Nineteenth century, in: *Journal of Ethnic and Migration Studies* 32 (2006), p. 847–864.
- 12 Eric HEIJS, *Van Vreemdeling tot Nederlander. De verlening van het Nederlandschap aan vreemdelingen 1813–1992*, Amsterdam 1995, p. 216–229.
- 13 Marlou SCHROVER, The Deportation of Germans from the Netherlands 1946–1952, in: *Immigrants & Minorities* 33 (2015), p. 254.
- 14 Japanese citizens were formally categorized as Europeans. A list with selected data about the population of the Dutch East Indies could be found in the appendix. *Uitkomsten der in de maand november 1920 gehouden volkstelling Deel II (Batavia 1922) 3, 129, 165, 257 Departement van Economische Zaken, Volkstelling 1930. Deel VIII. Overzicht voor Nederlandsch-Indië (Batavia 1936) 2, 11, 14. Maaïke van der BERG, A German Border Crossing in a European Colonial Community. The Deutsche Bund in the Dutch East Indies and its Transnational Sense of National Belonging (1915–1940)*, Amsterdam 2015 (unpublished MA-thesis), p. 10.
- 15 Katja HAPPE, *Deutsche in den Niederlanden 1918–1945. Eine historische Untersuchung zu nationalen Identifikationsangeboten im Prozess der Konstruktion individueller Identitäten*, Siegen 2004.

were rather the exception than the rule<sup>16</sup>. But even those families who were distinctly German could live an uncomplicated life in pre-war Dutch society. For them, the German invasion and occupation of the Netherlands did not mark a radical break with the pre-war daily life, in contrast to the more binational orientated Germans caught between their motherland and new fatherland; they faced an occupier of their own nationality and the German-Jewish refugees, who again faced the Nazi-regime and knew that anxious times lay ahead.

In the Dutch overseas territories, Germans held a different status. After the German invasion of the Netherlands, Germans in the Dutch East Indies were imprisoned in Dutch internment camps together with NSB-sympathisers<sup>17</sup>. Johanna, originally a Dutch woman who had married a German in 1929 in Soerabaja, was one of those interned<sup>18</sup>. Although her husband had tried several times to obtain Dutch citizenship, he was in 1940 still a German citizen and in May 1940 the couple was interned by the Dutch authorities. Together with her children, Johanna was interned in camp Tarontoeng and her husband was transferred to the British Indies. In 1941 Johanna and her children received permission to leave for Europe, but travelling across the Eurasian continent proved impossible due to Operation Barbarossa and Johanna was stuck in Shanghai. Her husband managed to return to Germany, eventually settling in Kenya. Johanna filed for divorce on 24 July 1946 in Shanghai which was subsequently granted by the Chinese court. Officially, she was now a Dutch citizen once more, but the decision by the Chinese judge was not considered valid by the Dutch Property Administration Institute in The Hague. According to the Institute, Johanna was - and had been - a German enemy citizen - after all, she had been married to a German man during the war.

In the West East Indies, people were affected by the fact that they were of German origin during the war. In Surinam, the Dutch governor had all male Germans aged fifteen or older interned in Fort Zeelandia. A group of Austrian nationals, some of whom held residence in Surinam and Curacao in May 1940 were arrested and interned only days after Germany invaded the Netherlands<sup>19</sup>. In the terminology of Nazi Germany, Austrians were officially *Volksdeutsche*, i. e. ethnic Germans. In contrast to *Reichsdeutsche*, imperial Germans living in Germany, they had no official legal citizenship. However, by the Dutch definition of Germans, citizens of territories occupied by Germany, such as Austria and Sudetenland, were considered together with Germany under the same heading and thus Austrians were also considered enemy citizens. After the war, the Dutch hoped to send the group of Austrians back to Austria, but since their personal documents stated that they all had become members of the NSDAP after the *Anschluss*, they were not allowed to enter Allied-occupied Austria. The group was transferred from the West-Indies to camp Mariënbosch near the Dutch city Nijmegen.

Johanna appealed the verdict of the NBI at the Council of Restoration of Rights. Published jurisprudence gives an interesting insight in the complexity of the de-enemisation request. Testimonies stated that Johanna had behaved »as a true Dutch«, both during her stay in the Dutch East Indies and in Shanghai and that she had not been in contact with Germans, a statement that seems rather disputable considering her marriage to a German man. More importantly, she had had a difficult life. Evidence was given that Johanna had been pregnant at the time of her internment and that on 24 May 1940, only two weeks after the internment, she had given birth to a still-born baby. In 1948, the Council of Restoration of Rights abolished the verdict of the

16 Ibid., p.185–187.

17 This changed when the Japanese arrived in 1942: during the Japanese occupation Germans were, due to the Axis-alliance between Germany and Japan, not interned.

18 For privacy reasons the surname is left out. The case is published in: *Tribunalen in Nederland en andere Naoorlogsche Rechtspraak*, 11 September 1948, no. 1376 134–136.

19 Jan SINTEMAARTENS DIJK, Yfke NIJLAND, *Operatie Black Tulip. De uitzetting van Duitse burgers na de oorlog*, Amsterdam 2009, p. 123–124.

NBI and Johanna was granted a no-enemy declaration. Her husband never received a no-enemy declaration: his confiscated property was used to pay alimentation to Johanna. The group of Austrians was in 1948 still interned. In camp Mariënbosch they were detained together with many other German nationals. As early as the Autumn of 1944 the Dutch had started to arrest and intern German nationals, albeit on a local scale as only the southern parts of the Netherlands were liberated. Some Germans were even expelled while others fled. The first organised initiative took place in August 1945 when 600 Germans were arrested in Amsterdam<sup>20</sup>. A nation-wide plan to deport all German nationals from the Netherlands, codenamed »Operation Black Tulip«, was implemented a year later. Germans who had entered the country after 1940 were to be deported first, followed by those who came after 1933. Those Germans who had come to the Netherlands before 1933, or who were born in the Netherlands, would be deported last.

Operation Black Tulip started on 10 September 1946<sup>21</sup>. Around half past five in the morning, the police surprised various German families, to impede their escape. Germans were only allowed to take a few possessions and little money: three blankets, a knife, fork and spoon, a toothbrush, 50 kilos of luggage and 100 guilders. Children could take five kilos of luggage and 50 guilders. Other possessions were confiscated<sup>22</sup>. Some families had already been through a whole criminal procedure by the time Operation Black Tulip started. Immediately after the Dutch Property Administration Institute had been established in August 1945, several Germans had challenged their status as enemy citizens in the hope of clearing their names and having their property returned. Precise criteria for de-enemisation were at that time not yet defined. Some people received a no-enemy declaration shortly after the war; others had had years of uncertainty.

The cases of Johanna and the Austrians highlight the global reach of the Decree on Enemy Property. Since they are just two of the various cases in the archive of the NBI that concern Germans in Dutch overseas territories, I cannot claim that they are either representative or that they provide data for generalist conclusions about the fate of Germans overseas. However, they do illustrate the rigidity of the Dutch categorisation of enemy citizens. In the Decree on Enemy Property, all individuals related to Germany – *Reichsdeutsche*, *Volksdeutsche* and even Germans abroad, *Auslandsdeutsche*, were lumped together under the same heading. Regardless of place of residence or political allegiance, despite the fact that some Germans in the overseas territories were not born in Germany but had inherited German citizenship or that Dutch women had obtained the German nationality by marriage, Germans were declared enemy citizens. The case of Johanna in the Dutch East Indies and the case of the Austrians in the West Indies thus show not only the global reach of the Decree on Enemy Property, but also the limitations and inconsistencies of nationality as category of analysis. I will further address this conclusion in the paragraph on notions of citizenship.

### Dutch Post-War Policies: Transitional Justice?

The Decree on Enemy Property was one of the royal decrees issued by the Dutch government-in-exile to purge and restore order to Dutch society after 1945. In recent historiography, the post-war period of reconstruction in the Netherlands has been described in terms of transitional justice. Peter Romijn and Erik Schumacher have pointed out that the Dutch transition from an occupied society to a system of democracy and the rule of law required the punish-

20 Vrije Volk, 4 August 1945.

21 Parool, 10 September 1946. See also: Trouw, 11 September 1946.

22 SINTEMAARTENSDIJK, NIJLAND, Operatie Black Tulip (as in n. 19), p. 11.

ment of political collaborators in a way that was satisfactory – both legally and emotionally<sup>23</sup>. To contribute to this historiographical debate, a second aspect that I want to explore is what insights we can gain when we apply the instrumentarium of transitional justice to research on Dutch policies towards German enemy citizens. Was the Decree on Enemy Property perceived as an instrument to accomplish justice, or as an act of revenge?

Transitional justice is an umbrella concept for various (non)judicial measures implemented in different countries to redress legacies of human rights abuses and to facilitate a smooth transition towards a more democratic or peaceful future after times of occupation or dictatorship. These (non)judicial measures include criminal prosecutions, reparations programs and various kinds of institutional reforms as well as truth commissions, such as the National Commission on the Disappearance of Persons (1983) in Argentina and the Truth and Reconciliation Commissions in Chile (1990) and South Africa (1995). The origins of the field can be traced back to the first years after World War II when the International Military Tribunal at Nuremberg, the Tokyo Tribunal and various de-nazification programs in Germany were established. In recent years, the concept of transitional justice has come to play a prominent role in academic debates on democratisation, nation-building and state-reconstruction, and it has gained widespread support from international organisations.

Considering that the Decree on Enemy Property was issued to restore order in post-war Dutch society and to deal with the (internal) enemy, one would assume that the instrumentarium of transitional justice could be of explanatory value. The Decree on Enemy Property was a political and judicial measure to safeguard a substantial boost for the Dutch treasury. Since the Allied Powers would not grant the Dutch much in reparations, confiscation of German assets would constitute the largest part of post-war financial compensation. Furthermore, the Decree was a measure to deal with people who had supported the Nazi occupier. By identifying those responsible for war crimes and collaboration, and imposing sanction on them, peace was enhanced.

It seems that in the first years after the war, the Decree on Enemy Property was hardly a controversial topic in the liberated Netherlands. This in contrast to Operation Black Tulip, which raised negative sentiment. Marlou Schrover's analysis of national and regional newspapers has shown how in a relatively short period discourse changed from revenge to pity<sup>24</sup>. Initially, the plans to deport Germans were welcomed. The main argument in favour of deportation sprang from the reversal: »we« (the Dutch) could do to the Germans what they had done to »us«<sup>25</sup>. Practical arguments also played a role: by deporting Germans, houses would be made available to the Dutch. But discourse changed within a few months. It proved difficult to distinguish between »good« and »bad« Germans. More importantly, when deportations started it became clear that »Germans« also meant the daughters and sisters of Dutch citizens who had married German men. Articles on the deportations of Germans mirrored stories about the deportations of Jews during the war. One newspaper even used the word »razzia« to describe the actions of police<sup>26</sup>. Another newspaper wrote about German children who crossed the border and begged for food in the Netherlands, quoting a border guard who let the children slip: »You cannot continue to hate«<sup>27</sup>. From May 1947 onwards, Catholic minister of Justice Van Maarseveen was confronted with increased resistance in parliament and criticism from the Catholic (refugee)

23 Peter ROMIJN, Erik SCHUMACHER, *Transitional Justice in the Netherlands after World War II*, in: *Transitional Justice and Memory in Europe (1945–2013)*, ed. by Nico WOUTERS, Cambridge 2014, p. 133–171.

24 SCHROVER, *The Deportation of Germans*, (as in n. 13), p. 250.

25 *Ibid.*, p. 270.

26 *Rotterdamsch Nieuwsblad*, 13 September 1946.

27 *Nieuwe Courant*, 18 September 1946.



support organisation Caritas and the press. According to a member of the *Anti-Revolutionaire Partij* (ARP), conditions in transit-camp Mariënbosch were not as good as Dutch authorities claimed<sup>28</sup>. Germans who had done nothing wrong were deported, and this was immoral. Furthermore, living conditions in Germany were harsh. Was it humane to send people back to a nation in ruins? Was it not enough to dispose of only those Germans who acted against the Netherlands during the war; what was the added value of deporting innocent people? Protests against the deportations increased.

Moral questions with regard to the Decree on Enemy Property were raised a few years later by legal scholars. In 1946, president of the Council of Restoration of Rights Pieter Sjoerd Gerbrandy stated that German assets were confiscated as reparation payments<sup>29</sup>. The take-over of assets of those people who had committed crimes during the war would give the confiscation a repressive character, and would make the NBI a political judge. Therefore, nationality was the main criterion, rather than political allegiance or individual actions during the war. Only in exceptional cases was de-enemisation allowed: the declaration, which the Council considered to be a special honour, was only to be granted to those who had actively supported the Dutch or Allied Forces<sup>30</sup>. But as discussions amongst legal scholars indicate, many cases were in practice too complex to be solved with help of these general guidelines. Furthermore, were the policies towards Germans morally acceptable? To what extent did they contradict the principles of international law? And, could it be morally justified that Dutch policies punished Germans collectively, even though many individuals had been resident in the Netherlands for decades and had nothing to do with the Nazi-regime? As one of the preeminent scholars argued: »As the Decree on Enemy Property seems in contravention with international law, it cannot be justified on legal grounds [...] It is however another question whether the Decree is politically desired, or even required«<sup>31</sup>. He came to the conclusion that the Dutch measures could not have been abandoned. This brings me back to the question raised earlier whether the Dutch policies towards German nationals, the Decree on Enemy Property in particular, can be seen as a process of transitional justice.

The instrumentarium of transitional justice helps to understand why the Dutch government issued certain acts and decrees, and how these measures helped to build a democratic system of governance. The instrumentarium also shows that when it comes to the core value of transitional justice – the very notion of justice –, the question is not whether justice was done, but whether justice was perceived. In the early post-war years, Dutch policies were marked by the fostering of national reconciliation. Whereas initially motives of revenge played a role, analysis of newspapers has shown that after a relatively short period discourse changed from revenge to pity. This emphasis on the time brings me, however, to one important observation. Although the instrumentarium of transitional justice can be of explanatory value to understand the process of transition in time, it does not shed light on how the process of administration of justice developed along the way. Dutch post-war administration of justice was not so much an organised implementation of decrees prepared in London, but rather a sequence of improvised and individual actions and events. The process of transitional justice was not just a time-consuming process, but also a process of trial and error, of inconsistencies and arbitrariness. The current terminology of transitional justice employs such phrases as »implementing measures«, »repairing systems« and »(re)building structures«. Little attention is paid to the role of individual ac-

28 Anti Revolutionaire Partij (ARP) in English is the Anti-Revolutionary Party, a protestant Christian-democratic political party.

29 Rechtsherstel, 1 (1946), p. 449.

30 Ibid.

31 P. STOFFELS, *Vijandelijk Vermogen en volkenrecht*, in: *Nederlands Juristenblad* 22 (1948), p. 393–400.

tors in the process. In the Dutch case, however, employers of the NBI and the immigration and naturalisation service, such as police men, lawyers, counsellors and judges seem to have been crucial, defining actors in the process of transitional justice. Exploratory research indicates that, particularly in the early post-war years, Dutch administration of justice towards German nationals was quite arbitrary<sup>32</sup>. Precise criteria for de-enemisation procedures were not defined in the Decree on Enemy Property. Whether someone received a no-enemy declaration seems to have depended on the NBI employee who dealt with the case, and on the social position of the German in question. Over the years, some very generalist criteria were defined, as we will see in the final paragraph.

### Challenging Notions of Citizenship

One of the major issues the NBI employers faced regarding the implementation of the Decree on Enemy Property was the heterogeneity of the German minority in the Kingdom of the Netherlands. As mentioned earlier, Germans constituted the largest immigrant minority in the Netherlands until 1971 and included miners, farmers, sailors, dockworkers, prostitutes, waiters, clerks, *Dienstmädchen*, musicians, missionaries, artists, entrepreneurs, nobility as well as many other professions. Some of these German migrants had a residence permit. Others were German through marriage, like Johanna. A special sub-group of German immigrants were the German Jewish refugees. It is estimated that in 1940 between 15 000 and 30 000 German Jews held residence in the Netherlands – some for only a short period and others, for years<sup>33</sup>. Technically, these Jews had lost their German citizenship and were thus stateless. But since the Dutch government declared the Nuremberg Laws of 1935 not legally valid, they were still considered to be German citizens – and therefore enemy citizens. Jews who had been deported, but who had managed to survive the war, were interned for a second time upon their return to the Netherlands. Like other German enemy citizens, they also had to submit a request for a de-enemisation declaration.

Whilst the idea of citizenship is usually linked to privileges, rights and legal protection by the state, Jews thus were twice affected because of the status of their German citizenship. The status of German citizenship also had great implications for other German nationals in the Kingdom of the Netherlands. Most German nationals who were affected by the Decree on Enemy Property were *Reichsdeutsche* whose legal status had never been an issue before 1940. Germans had been welcomed with open arms in the 1920s. They had started (often bi-national) families and most of them had fully integrated. Some had acquired Dutch nationality through naturalisation. However, the naturalisation process was expensive and offered at that time few advantages. Others submitted a request for naturalisation but never received an answer. Due to the rise of national socialism in Germany, Dutch policies became more restrictive in the late 1930s and many of the naturalisation requests were postponed. After 1945, the status of Germans in the Netherlands, before 1940 best described as »resident«, changed to what in citizenship discourse is referred to as »alien«. They were now outsiders, without official status in their country of residence, and no longer allowed a residence or work permit. In theory, they could return to their country of origin. In practice, due to the division of Germany by the Allied Forces, this was rarely easy. Those Germans who wanted to stay in the Netherlands could ex-

32 OPREL, Ontvrijdingsbeleid en rechtsherstel (as in n. 2), p. 121. WIELENGA, West-Duitsland: Partner uit Noodzaak (as in n. 9), p. 420–421.

33 HAPPE, Deutsche in den Niederlanden (as in n. 15), p. 104. Happe refers to studies by H. B. J. STEGEMAN, J. P. VORSTEVELD, *Het Joodse werkdorp in de Wieringermeer*, Amsterdam 1983; and HORST LADEMACHER, *Die Niederlande. Politische Kultur zwischen Individualität und Anpassung*, Berlin 1993.

pect years of uncertainty. In order to be granted a no-enemy declaration, which would clear their name and return their property, they had to provide evidence of their »good« behaviour. But even in the first months following the German capitulation it became clear that this »good« behaviour was hard to define. What were the criteria, and who was to decide these matters?

Correspondence between NBI employees from various regional offices give an insight into the complexity of some de-enemisation requests. For instance, many NBI employees wondered whether Austrians and Sudeten-Germans were also to be considered Germans<sup>34</sup>. After all, *Volksdeutsche* did not hold official German citizenship. How to define the geographical borders of Germany? Other questions that arose were: what to do with people who held dual-nationality? How to deal with cases in which the enemy citizen in question had passed away, and the heirs had submitted a request for post-mortem de-enemisation? And, how to handle cases of people who had lived in the Kingdom of the Netherlands during 1940–1945, but now hold residence of non-Dutch territories? It took years until official guidelines were issued. The NBI handbook issued in 1948 stated that if a German (a) had been resident in the Netherlands for decades, (b) was integrated in Dutch society and (c) had behaved like »the greater majority of the Dutch people had done« and de facto not supported the Nazis, then de-enemisation could be considered<sup>35</sup>. For most Germans, the first two criteria, concerning residence in the Netherlands before 1940 and integration in Dutch society, were unproblematic. It was the third criterion that proved difficult to meet. In some cases, distribution of illegal newspapers and magazines seems to have been sufficient for a successful de-enemisation request, whereas in other cases an applicant had to provide evidence of helping people hide in order to be granted a no-enemy declaration.

For German Jews and Dutch women exceptional clauses were formulated. As early as 1946 newspapers had criticised the deportation of originally Dutch women who had become German through marriage, and in the late 1940s politicians and legal scholars expressed objections. To treat women of Dutch origin the same way as enemy citizens of German origin would be »an act of one-sided formalism«, one legal scholar argued<sup>36</sup>. Moreover, German Jews could not be lumped together with German enemy citizens. In the period 1947–1951 some adjustments and amendments were therefore implemented, to enable greater differentiation in the process of de-enemisation.

When we focus on Dutch policies towards German nationals in the aftermath of the Second World War from a citizenship-perspective, a two-sided image unfolds. On the one hand, German citizenship proved a mechanism of exclusion, as the Dutch declared all who held German citizenship to be enemy citizens. On the other hand, notions of Dutch citizenship functioned as mechanism of inclusion. All those who did not have the Dutch nationality were collectively considered outsiders, but people who could prove their loyalty to the Dutch were granted a no-enemy declaration. Exceptions were made for people of Dutch origin. A focus on notions of citizenship therefore not only helps to analyse and understand de-enemisation procedures, it also illuminates how a nationally orientated categorisation and definition of »the Dutch« came into being in the post-war years.

34 J. P. BARTH, *De liquidatie van het Duitse vermogen in Nederland*, in: *De Economist* 95 (1947), p. 607–614.

35 VEN, *Een omstreden eiland* (as in n. 9), p. 181.

36 *Archive Staten Generaal, Handelingen Tweede Kamer*, report 59e vergadering, 10 May 1951, folio 416, 1606.

## (Un)finished Business

On 26<sup>th</sup> July 1951, the end of the state of war between the Netherlands and Germany was proclaimed. From that moment on, German nationals within the Dutch Kingdom were no longer enemy citizens. However, the official end of the state of war did not mean that all former enemy citizens automatically regained their assets. To receive their property back, Germans still had to submit an official request. It would take another sixteen years before in 1967 the Council of Restoration of Rights, including the NBI, was dissolved. By then, according to the estimations of the Dutch government, German assets worth 750 million Dutch guilders had been confiscated and liquidated. Whether German enemy citizens ever received a (small) compensation remains unclear<sup>37</sup>. Financially, a *Schlussstrich* was drawn under the war in 1963 when the *Ausgleichsvertrag* of 1960 was ratified. But in the peace settlement, which determined that Germany would pay 280 million Deutsche Mark in reparation costs, German enemy citizens were not mentioned. Furthermore, the categorisation of Germans as an »enemy« affected Germans in Dutch society for decades. Some relatives still suffer the after-effects, most of them because they do not know their family histories. The post-war process of transitional justice will therefore only come to an end when the archives are opened, so that more research can be done on the history of German nationals in the Kingdom of the Netherlands after 1945.

37 The findings presented in this article are part of Marieke Oprel's PhD project »Germans as enemy citizens«, end date 2019.